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Attorneys for Defendants Oregon Department of Corrections, Oregon State Board Of Nursing, Coffey, Davis, Digiulio, Kelly, Magee, Mccrae, Peters, Poole; Premo and Ridderbusch

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS GINES,

Plaintiff,

v.

OREGON DEPARTMENT OF
CORRECTIONS (ODOC), a political
subdivision in charge of the Oregon State
Penitentiary (OSP); COLETTE PETERS,
Director, ODOC; C. DIGIULIO, Medical
Administrator, ODOC; BRANDON KELLY,
Superintendent, OSP; JEFF PREMO,
Superintendent, OSP; KEITH DAVIS, OSP
Food Services Manager; RICHARD
RIDDERBUSCH, OSP Assistant Food
Services Manager; CARRIE COFFEY, OSP
Health Services Manager; JULIE McCRAE,
OSP Health Services Nurse; BRENDA
MAGEE, OSP Health Services Nurse
Manager; OREGON STATE BOARD OF
NURSING (OSBN) a political subdivision of
the executive branch of the State of Oregon;
ROBERTA POOLE, OSBN Complaint Intake
Coordinator,

Defendants.

Case No. 6:17-cv-00841-SI

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT

JURY DEMAND

Defendants Colette S. Peters, Brandon Kelley, Christopher DiGiulio, Jeff Premo, Keith Davis, Richard Ridderbusch, Carrie Coffey, Julie McCrae, Brenda Magee, and Roberta Poole, respond to plaintiff's Complaint and admit, deny, and allege as follows:

1.

Admit that Colette S. Peters is the Director of the Oregon Department of Corrections (ODOC).

2.

Admit that ODOC employed Jeff Premo as Superintendent at the Oregon State Penitentiary in Salem and who is now retired.

3.

Admit that ODOC employed Keith Davis as Food Services Manager at OSP and who is now retired.

4.

Admit that ODOC employs Brandon Kelley as the current Superintendent at OSP.

5.

Admit that ODOC employs Christopher DiGiulio as the acting Medical Director of ODOC.

6.

Admit that ODOC employs Richard Ridderbusch as Assistant Food Services Manager at OSP.

7.

Admit that ODOC employs Carrie Coffey, R. N., as Medical Services Manager at OSP.

8.

Admit that ODOC employed Julie McCrae as an Institution Nurse until she resigned November 2015.

Admit ODOC employs Brenden MaGee as Nurse Manager at OSP.

10.

Admit Roberta Poole is the Oregon State Board of Nursing Complaint Intake Coordinator.

11.

Admit Dennis Gines, SID #12019691, is an adult admitted to the custody of ODOC on May 2, 2013, is currently housed at OSP, and has a tentative earliest release date of December 29, 2018.

12.

Except as expressly admitted herein, defendants lack sufficient information to respond to the remaining allegations in plaintiff's Amended Complaint (Dkt. # 41), and therefore deny them.

Jury Demand

13.

Defendants demand a jury trial on those claims for which a jury trial is available pursuant to Fed. R. Civ. P. 38(b).

FIRST AFFIRMATIVE DEFENSE:
(Qualified immunity)

14.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

15.

Defendants allege that at all times relevant to plaintiff's Complaint, they were acting in good faith and within their discretion pursuant to the laws and statutes of the State of Oregon and the United States, and defendants' conduct violated no clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

SECOND AFFIRMATIVE DEFENSE:
(Failure to state a claim)

16.

Defendants incorporate herein the admissions, denials and allegations set forth above.

17.

Defendants allege that plaintiff has not been deprived of any right, privilege, or immunity secured by the Constitution, the laws of the United States or the State of Oregon and therefore fails to state a claim under 42 U.S.C. §1983. *Daniels v. Williams*, 474 U.S. 327, 333, 106 S. Ct. 662, 666 (1986); see also *Davidson v. Cannon*, 474 U.S. 344, 106 S. Ct. 668, (1986).

THIRD AFFIRMATIVE DEFENSE
(Prison Litigation Reform Act)

18.

Defendants incorporate herein the admissions, denials and allegations set forth above.

19.

Defendants assert all provisions of the Prison Litigation Reform Act, including the provision requiring exhaustion of administrative remedies, to plaintiff's claims.

FOURTH AFFIRMATIVE DEFENSE
(Eleventh Amendment Immunity)

20.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

21.

Defendants invoke their immunity from suit in federal court under the Eleventh Amendment. *NRDC v. California Dept. of Trans.*, 96 F.3d 420, 421 (9th Cir. 1996).

FIFTH AFFIRMATIVE DEFENSE
(Oregon Tort Claims Act (OTCA))

22.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

23.

Defendants assert all provisions of the OTCA, including the provision requiring proper notice.

24.

Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

WHEREFORE, defendants pray for judgment herein denying plaintiff relief and granting defendants their costs, disbursements and attorney fees incurred in the defense hereof.

DATED May 4, 2018.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Nathaniel Aggrey
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Board Of Nursing, Coffey, Davis, Digiulio,
Kelly, Magee, Mccrae, Peters, Poole; Premo
and Ridderbusch

CERTIFICATE OF SERVICE

I certify that on May 4, 2018, I served the foregoing DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT upon the parties hereto by the method indicated below, and addressed to the following:

Dennis Gines
SID #12019691
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505
Plaintiff Pro Se

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 TELECOPY (FAX)
 E-MAIL
 E-SERVE

s/ Nathaniel Aggrey

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Nursing, Coffey, Davis, Digiulio, Kelly,
Magee, Mccrae, Peters, Poole; Premo and
Ridderbusch